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**FEDERAL ELECTION COMMISSION**

999 E Street, N.W.  
Washington, D.C. 20463

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**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

RAD Referral: 05L-38

RAD Referral Date: July 19, 2005

Date Activated: May 31, 2006

Expiration of Statute  
of Limitations: September 29, 2009

**SOURCE:**

**RAD REFERRAL**

**RESPONDENTS:**

Kalyn Free for Congress and Loyce Bell in her  
official capacity as treasurer  
Kalyn Free

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 434(b)  
2 U.S.C. § 439a(a)(1)  
2 U.S.C. § 439a(b)(1)  
11 C.F.R. § 113.1(g)(1)(i)(I)  
11 C.F.R. § 110.10(a)  
11 C.F.R. § 116.5(b)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports  
Request for Additional Information

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

This referral from the Reports Analysis Division ("RAD") concerns the personal use of campaign funds by Kalyn Free, a candidate for U.S. Congress in Oklahoma in 2004, that were paid to her "as salary" by her 2004 authorized committee, Kalyn Free for Congress and Loyce Bell, in her official capacity as treasurer ("Committee"), after Ms. Free lost her 2004 primary election. After receiving a Request for Additional Information ("RFAI") from RAD questioning

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1 the payment of a salary after Ms. Free lost the primary, the Committee maintained that the salary  
2 payment was pursuant to a May 2004 oral agreement, but acknowledged that the \$50,000 salary  
3 payment was \$29,000 higher than permitted by law. Over time, Ms. Free refunded to the  
4 Committee a net amount purporting to be the difference between the overpayment in salary and  
5 \$14,659 in expenses that she purportedly advanced to the Committee. The referral also concerns  
6 the Committee's reporting of various receipts and debt relating to the salary payments, the  
7 expense payments Ms. Free claimed she advanced, and the refunds she made to the Committee.

8 As set forth below, this Office recommends that the Commission find reason to believe  
9 that the Committee and Kalyn Free violated the personal use prohibitions of the Federal Election  
10 Campaign Act of 1971, as amended ("the Act"), and that the Committee also violated the Act's  
11 reporting requirements. In addition, we recommend an investigation to obtain evidence  
12 regarding the Committee's purported agreement to pay a \$50,000 salary to Kalyn Free and  
13 regarding the \$14,659 in expenses purportedly advanced by Ms. Free that were reimbursed by  
14 the Committee. We also want to question the Committee regarding a debt disclosed on its 2005  
15 July Quarterly Report with an outstanding balance of \$12,000 at the beginning of the reporting  
16 period that was described as a "deferred salary payment" to Ms. Free. This debt was the subject  
17 of an RFAL, and in response to that inquiry, the Committee deleted this debt on the amended  
18 report.

19 **II. FACTUAL AND LEGAL ANALYSIS**

20 **A. Facts**

21 On Schedule B of its original 2004 October Quarterly Report, the Committee reported, as  
22 "salary," payments to Kalyn Free on September 29, 2004 in amounts of \$35,000 and \$15,000.  
23 The Committee made these payments approximately two months after Ms. Free lost her 2004

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1 primary election in Oklahoma, which occurred on July 27, 2004. On Schedule D of the report,  
2 the Committee reported debt incurred in the amount of \$50,000 to Kalyn Free, also described as  
3 "salary," and its corresponding payment to Ms. Free during the reporting period.

4 On February 24, 2005, RAD sent an RFAI to the Committee, noting, among other things,  
5 "if a candidate loses in the primary election and is not participating in the general election, they  
6 may not continue to receive payments after the date of the primary," and that salary payments  
7 made to the candidate after the July 27, 2004 primary constitutes a personal use of campaign  
8 funds. The RFAI requested that the Committee seek reimbursement from the candidate for the  
9 full amount of the personal use violations and notify the Commission of the reimbursement. It  
10 also stated that if the payments did constitute personal use of campaign funds "the Commission  
11 may take further legal action. However, prompt action to obtain reimbursement of the funds in  
12 question will be taken into consideration."

13 In response to the RFAI, on March 28, 2005, the Committee filed a miscellaneous  
14 statement indicating that the Committee had been unaware that a candidate could only begin to  
15 accrue salary at the end of the ballot qualification period, which in Ms. Free's case, was June 9,  
16 2004. According to the Committee, Kalyn Free believed that salary could begin to accrue when  
17 she filed her statement of candidacy in October 2003. However, the Committee indicated that  
18 if salary payments were appropriate only between the ballot qualification deadline of June 9,  
19 2004 and the primary election date of July 27, 2004, Ms. Free was entitled to \$21,000.<sup>1</sup> The  
20 Committee also stated that "[u]pon further review of Ms. Free's records, it has been determined  
21 that" approximately \$14,659 "in unreimbursed expenses were never received by Ms. Free."

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<sup>1</sup> According to the Committee, since Ms. Free earned "far in excess of what a member of Congress earned in 2003," she was entitled to a pro-rata salary for the 7 week period based on the annualized rate of pay to a member of Congress of \$156,000.

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1 Netting the excess salary payments of \$29,000 (\$50,000 - \$21,000) with the amount purportedly  
2 owed to Ms. Free (\$14,659) left a balance owed by Ms. Free to the Committee of \$14,341, which  
3 the Committee indicated she would refund when funds became available.<sup>2</sup>

4 On March 28, 2005, the Committee also amended its 2004 October Quarterly Report to  
5 reflect a disbursement of \$35,000 for "salary" and a disbursement of \$15,000 for "salary  
6 overpayment." Additionally, on Schedule D, the Committee reported that Ms. Free owed  
7 \$14,341 to the Committee for "overpayment on salary." The Schedule D also reflected a  
8 Committee debt of \$21,000 to Ms. Free for "salary," a payment of \$35,000 on that debt and an  
9 outstanding negative balance of \$14,000.

10 Thereafter, a RAD analyst left messages for the Committee's treasurer and the candidate  
11 concerning the salary payments, indicating that there was an outstanding issue on the 2004  
12 October Quarterly Report and that the matter would be referred to the Office of General Counsel.  
13 In two telephone calls with the Committee's Finance Director, RAD personnel informed the  
14 Committee that its response to the February 24, 2005 RFAI was incomplete because it had not  
15 amended its reports to disclose the Committee's alleged debt to Ms. Free for unpaid expenses nor  
16 provided any evidence that the Committee's obligation to pay Ms. Free a salary existed prior to  
17 July 27, 2004, the date of the primary election. In response, on June 2, 2005, the Committee  
18 filed a miscellaneous statement in which Dave Parker, the former Campaign Manager of the  
19 Committee, asserted that it was always the Committee's intention to pay Ms. Free a salary of  
20 \$50,000 based upon an oral agreement in May 2004 between himself and Ms. Free. Mr. Parker  
21 stated that Ms. Free had agreed to defer payment of her salary until the end of the campaign to

<sup>2</sup> The Committee stated that "due to the costs of the campaign, the lack of income during 2004, as well as the fact that Ms. Free made a deposit of \$21,644.50 with the Internal Revenue Service and Oklahoma Tax Commission subsequent to the \$50,000 payment for anticipated salary, Ms. Free is unable to return the funds at this time. However, once Ms. Free receives her tax refund from the IRS, she will promptly repay her campaign the monies due."

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1 ensure that all campaign bills and staff were paid. Mr. Parker also noted that because of the  
2 Commission's interpretation of the law, the salary payment had been reduced to \$21,000.  
3 Finally, he noted that Ms. Free had made a \$4,000 payment on May 31, 2005, leaving her  
4 remaining debt amounting to \$10,341.

5 On July 15, 2005, the Committee filed its 2005 July Quarterly Report disclosing a receipt  
6 of \$4,000 from Kalyn Free on May 31, 2005 without describing the nature of the receipt. On  
7 Schedule D of this report, the Committee reported an outstanding debt of \$14,341 due from  
8 Ms. Free, with no payments being made on the debt during the period. The debt was described  
9 as "overpayment on salary." RAD sent the Committee an RFAI regarding its 2005 July  
10 Quarterly Report questioning whether the debt balance at the close of the period should be  
11 \$10,341 to reflect the payment of \$4,000. RAD also questioned another debt entry reflecting an  
12 outstanding balance of \$12,000 at the beginning of the reporting period, which was described as  
13 "deferred salary payment" concerning Ms. Free because this debt had not appeared on the  
14 previous report. In response to the RFAI, the Committee amended the report to reflect the  
15 reduction in the outstanding debt balance from \$14,341 to \$10,341. The Committee deleted the  
16 \$12,000 debt on the amended report.<sup>3</sup>

17 On October 15, 2005, the Committee filed its 2005 October Quarterly Report, which  
18 reported on Schedule A several receipts between August 1, 2005 and September 25, 2005 from  
19 Ms. Free totaling \$10,341. On Schedule D of this report, the Committee showed Ms. Free's debt  
20 as \$10,341 at the beginning of the reporting period, the payment of \$10,341 during the reporting  
21 period, and an outstanding balance of zero.

<sup>3</sup> This entry relating to a \$12,000 "deferred salary payment" could have been an error by the Committee, but we will attempt to ascertain the facts surrounding it in our investigation. See discussion *infra*.

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1 Following the referral, on the same day it filed its 2005 October Quarterly Report, the  
2 Committee filed an amendment to its 2004 October Quarterly Report. The amendment contained  
3 several memo entries on Schedule B. The first entry was a \$50,000 disbursement to Ms. Free on  
4 September 29, 2004 that contained the description "payment see below," which referred to the  
5 additional memo entries immediately following that described a disbursement of \$21,000 in  
6 salary to Ms. Free, a disbursement of \$14,659 to Ms. Free for miscellaneous expenses, and a  
7 disbursement of \$14,341 to Ms. Free for overpayment of salary. On Schedule D of the report,  
8 the Committee included memo entries showing a debt of \$14,341 owed to the Committee by  
9 Ms. Free, a debt of \$21,000 incurred by the Committee to Ms. Free for salary during this period  
10 that was also paid during this period, and a debt of \$14,659 incurred to Ms. Free during this  
11 period for miscellaneous expenses that was paid during this period.<sup>4</sup>

12 **B. Analysis**

13 **1. Personal Use**

14 A contribution accepted by a candidate may be used by the candidate for otherwise  
15 authorized expenditures in connection with the campaign for federal office of the candidate.  
16 See 2 U.S.C. § 439a(a)(1). However, a contribution or donation described in 2 U.S.C.  
17 § 439a(a) shall not be converted by any person to personal use. 2 U.S.C. § 439a(b)(1).  
18 "Personal use" means any use of funds in a campaign account of a present or future candidate to  
19 fulfill a commitment, obligation, or expense of any person that would exist irrespective of the  
20 candidate's campaign or duties as a federal officeholder. 11 C.F.R. § 113.1(g).

<sup>4</sup> The Committee filed a final amendment to its 2004 October Quarterly Report on December 2, 2005, in response to an RFAI requesting an explanation of the change in the amount of debt disclosed on the amended report dated October 15, 2005 from the amount listed on the original report. With the amended report, the Committee provided a narrative statement concerning reporting mistakes involving Ms. Free's salary payments and debt and its various efforts to correct them.

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1 A candidate's principal campaign committee may pay a salary to a candidate in  
2 accordance with 11 C.F.R. § 113.1(g)(1)(i)(I). A candidate may receive salary payments that do  
3 not exceed the lesser of the minimum salary paid to a Federal officeholder holding the Federal  
4 office that the candidate seeks or the earned income that the candidate received during the year  
5 prior to becoming a candidate, but any earned income that a candidate receives from salaries  
6 or wages from any other source shall count against the minimum salary paid to a Federal  
7 officeholder holding the seat sought by the candidate. Upon request of the Committee, the  
8 candidate must provide evidence of earned income. *Id.* Moreover, the committee shall not pay  
9 salary to a candidate before the filing deadline for access to the primary election ballot for the  
10 Federal office that the candidate seeks, as determined by state law. *Id.* During the time period in  
11 which a principal campaign committee may pay a salary to a candidate, such payment must be  
12 computed on a pro-rata basis. *See id.* If the candidate loses the primary, withdraws from the  
13 race, or otherwise ceases to be a candidate, the committee may not pay salary to the candidate  
14 beyond the date he or she is no longer a candidate. *Id.*

15 The Committee made \$90,000 in salary payments to Ms. Free on September 29, 2004, at  
16 least \$29,000 of which was admittedly in excess of the amount she was eligible to receive, no  
17 matter when the payment was made. Because Ms. Free lost the primary election, she was not  
18 entitled to any payments for any time period after the primary election ended. RAD advised the  
19 Committee that it had not amended reports to show a debt owing to Ms. Free nor provided any  
20 evidence that a debt to her existed prior to July 27, 2004. In response, the Committee stated that  
21 there was an oral agreement in May 2004 between then campaign manager, Dave Parker and  
22 Kalyn Free to compensate Ms. Free with a salary of \$50,000, payment of which was to be  
23 deferred until the end of her campaign, but did not provide any further evidence, such as

1 affidavits from both Mr. Parker and Ms. Free, attesting to the oral agreement and documenting  
2 that, based on her 2003 income, she was entitled to a pro-rata salary based on the salary of a  
3 member of Congress in 2004. Once advised that the Committee had overpaid Ms. Free from  
4 campaign funds, Ms. Free did not fully reimburse the Committee until September 25, 2005,  
5 approximately seven months thereafter, at which time she had the personal use of a portion of  
6 campaign funds for approximately a year.

7 Therefore, we recommend that the Commission find reason to believe that Kalyn Free  
8 and Kalyn Free for Congress and Loyce Bell, in her official capacity as treasurer, violated  
9 2 U.S.C. § 439a(b)(1).

## 10 2. Reporting

11 Each treasurer of a political committee shall file reports of receipts and disbursements  
12 in accordance with 2 U.S.C. § 434(a) and must comply with the requirements of 2 U.S.C.  
13 § 434(b)(2) and (3). The treasurer must also report the amount and nature of outstanding debts  
14 and obligations owed by or to such political committee. 2 U.S.C. § 434(b)(8).

15 In addition to reporting erroneous and confusing entries relating to the salary  
16 overpayments, the Committee failed to report any debt incurred to Ms. Free for a salary, arising  
17 from the purported May 2004 oral agreement, on its 2004 12 Day Pre-Primary Report, which  
18 covered April 1, 2004 through July 7, 2004. By not reporting any such debt on that report, the  
19 public was not notified that the Committee had agreed to pay the candidate a salary until after the  
20 primary election was over. Moreover, as noted in the referral, the Committee has never amended  
21 its 2004 12 Day Pre-Primary Report to reflect any such debt.

22 Furthermore, the Committee contends that it owed \$14,659 to Ms. Free for campaign  
23 expenses paid by her that were to be reimbursed. Although candidates may make unlimited

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1 contributions to their own campaigns, 11 C.F.R. § 110.10(a), including advances, the  
2 contributions must be properly reported. See 2 U.S.C. § 434(b)(3) (authorized committees must  
3 identify persons during the reporting period, whose contribution(s) have an aggregate amount in  
4 excess of \$200 within the election cycle). If candidates make contributions that they intend to be  
5 advances, their committees should report the contributions in memo entries on Schedule A as in-  
6 kind contributions, identify them as "advances," and continuously report them on Schedule D  
7 until repaid. See 11 C.F.R. § 116.5(b) and (c). See also 11 C.F.R. § 104.11 (debts exceeding  
8 \$500 or debts of any amount that have been outstanding for more than 60 days must be reported  
9 on Schedule D). Certain travel and subsistence expenditures do not have to be reported as  
10 contributions if payment is made with a credit card and is reimbursed within 60 days of the  
11 closing date of the billing statement on which the charges appear. 11 C.F.R. § 116.5(b)(2).  
12 However, those travel and subsistence expenses must be reported as expenditures. See 2 U.S.C.  
13 § 434(b)(4)(A). Otherwise, advances for travel and subsistence expenses are in-kind  
14 contributions, and reported the same way as other advances.

15 In this instance, the Committee did not report as in-kind contributions any of the  
16 \$14,659 it later claimed it owed Ms. Free, and only reported the full amount as debt after RAD  
17 questioned it about the \$50,000 in salary payments to the candidate. If the Committee intended  
18 to reimburse Ms. Free for these expenses, it should have identified them as advances in memo  
19 entries on Schedule A of its disclosure reports when the advances were made. Additionally,  
20 pursuant to 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 116.5(c), the Committee should have  
21 continuously reported on Schedule D of its reports, as debt until it was repaid, its obligation to  
22 reimburse Ms. Free for these advances.

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1 Had the advances been properly reported at the outset, the Committee's repayment  
2 to Ms. Free should have referenced the original Schedule A memo entries to which the  
3 reimbursements related, see Advisory Opinion 1992-1, and shown the corresponding reduction  
4 in debt owed to the Committee. When the Committee amended its 2004 October Quarterly  
5 Report on October 15, 2005, it listed a disbursement to Kalyn Free for \$14,659 on September 29,  
6 2004, which suggests that all the expenditures were made during that reporting period.  
7 However, subsequently, in a narrative statement included with the amended 2004 October  
8 Quarterly Report dated December 2, 2005, the Committee said that Ms. Free made out-of-pocket  
9 expenses dating back to October 17, 2003. The Committee also stated that this amended report  
10 itemized the expenses incurred by Ms. Free that were in excess of \$200. The amended report  
11 showed a single disbursement of \$470 to Ms. Free on September 29, 2004 with the purpose of  
12 the disbursement described as "travel reimbursement," indicating that the remainder of the  
13 \$14,189 in reimbursed expenses were all for amounts of \$200 or less. However, the Committee  
14 had an obligation to itemize all contributions aggregating in excess of \$200 within the election  
15 cycle. 2 U.S.C. § 434(b)(3).

16 Therefore, there is reason to believe that Kalyn Free for Congress and Loyce Bell, in her  
17 capacity as treasurer, violated 2 U.S.C. § 434(b)(2), (3) and (8).

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9 **IV. RECOMMENDATIONS**

1. Open a Matter Under Review.
2. Find reason to believe that Kalyn Free for Congress and Loyce Bell, in her official capacity as treasurer, violated 2 U.S.C. § 439a(b)(1).
3. Find reason to believe that Kalyn Free violated 2 U.S.C. § 439a(b)(1).
4. Find reason to believe that Kalyn Free for Congress and Loyce Bell, in her official capacity as treasurer, violated 2 U.S.C. § 434(b)(2), (3) and (8).
5. Approve the attached Factual and Legal Analyses.
6. Approve the use of compulsory process.

7. Approve the appropriate letters.

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